

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Equal Employment Opportunity
Commission,

Plaintiff,

v.

RCC Partners LLC,

Defendant.

No. CV-21-01551-PHX-DLR

ORDER AND CONSENT DECREE

The Court having reviewed the parties' Joint Motion to Enter Consent Decree (Doc. 30), and good cause appearing;

IT IS ORDERED that the parties' joint motion is GRANTED. The Consent Decree is entered as follows:

I. RECITALS

1. This matter was instituted by Plaintiff Equal Employment Opportunity Commission, an agency of the United States government, alleging that Defendant RCC Partners, LLC d/b/a Subway 701 failed to provide Kenneth Wiley reasonable accommodations and discharged him because of his disability and/or because of his need for reasonable accommodations.

2. The Parties to this Decree are the Plaintiff EEOC and the Defendant RCC Partners, LLC.

3. The Parties, desiring to settle this action by an appropriate Consent Decree, agree to the jurisdiction of this Court over the Parties and the subject matter of this action

1 and agree to the power of this Court to enter a Consent Decree enforceable against
2 Defendant.

3 4. As to the issues resolved, this Decree is final and binding upon the Parties
4 and their successors and assigns.

5 5. For the purposes of amicably resolving disputed claims, the Parties jointly
6 request this Court to adjudge as follows:

7 **IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

8 **II. JURISDICTION**

9 6. The Parties stipulate to the jurisdiction of the Court over the Parties and
10 subject matter of this action and have waived the entry of findings of fact and conclusions
11 of law.

12 **III. TERM AND SCOPE**

13 7. The duration of this Decree shall be two (2) years from the date of signing
14 by the Court.

15 8. Unless otherwise indicated, the terms of this Decree shall apply to all
16 locations owned and/or operated by Defendant.

17 **IV. ISSUES RESOLVED**

18 9. This Decree resolves the claims alleged in the above-captioned lawsuit, and
19 constitutes a complete resolution of all of the Commission's claims of unlawful
20 employment practices under the ADA that arise from EEOC Charge Number 540-2019-
21 02842, filed by Kenneth Wiley.

22 10. Defendant and its officers, agents, employees, successors, and all other
23 persons in active concert or participation with any of them will not interfere with the relief
24 herein ordered but shall cooperate in the implementation of this Decree.

25 **V. MONETARY RELIEF**

26 11. Defendant shall pay the amount of \$30,000.00. This amount shall be payable
27 to Kenneth Wiley as specified in Paragraph 13 below.
28

1 12. Defendant will not condition the receipt of individual relief upon Kenneth
2 Wiley's agreement to: (a) maintain as confidential the terms of this Decree or the facts of
3 the case; (b) waive his statutory rights to file a charge with any federal or state anti-
4 discrimination agency; or (c) promise not to reapply for a position at any of Defendant's
5 facilities.

6 13. To resolve these claims, Defendant shall pay a total of thirty thousand dollars
7 (\$30,000) as non-pecuniary compensatory damages. The compensatory damages payment
8 shall be reported on IRS Form 1099 and shall not be subject to any payroll taxes or
9 withholdings.

10 14. The payment required under this Decree shall be mailed via certified mail to
11 Kenneth Wiley within ten (10) calendar days after the Court's entry of this Decree, and to
12 the address provided by the EEOC.

13 15. Within three (3) business days after the payment is sent to Kenneth Wiley,
14 Defendant shall submit to the EEOC a copy of the check issued to Kenneth Wiley.

15 **VI. OTHER INDIVIDUAL RELIEF**

16 16. Defendant shall expunge from Kenneth Wiley's personnel files any and all
17 references to (a) the allegations of discrimination filed against Defendant that formed the
18 basis of this action; and (b) Mr. Wiley's participation in this action.

19 17. Within ten (10) calendar days of the effective date of this Decree, Defendant
20 will provide Kenneth Wiley with a neutral letter of reference in the form attached as Exhibit
21 A.

22 **VII. EQUITABLE RELIEF**

23 **A. *Injunctive Relief***

24 18. Defendant, its officers, agents, successors, and other persons in active
25 concert or participation with it, or any of them, are permanently enjoined from engaging in
26 any employment practice which discriminates on the basis of disability.

27 19. Defendant, its officers, agents, successors, assigns, and other persons in
28 active concert or participation with them, shall not retaliate in anyway against employees

1 because of their opposition to any practice made unlawful under the ADA. Defendant shall
 2 not retaliate against employees if they i) bring internal complaints of discrimination with
 3 the Defendant, ii) bring a charge of discrimination with the Commission or any other
 4 agency charged with the investigation of employment discrimination complaints, or iii)
 5 make statements that serve as the basis of a charge or testify or participate in the
 6 investigation or prosecution of an alleged violation of the ADA.

7 ***B. Anti-Discrimination Policy Creation/Revision***

8 20. Within sixty (60) calendar days of the entry of this Decree, Defendant shall,
 9 in consultation with an outside consultant and/or legal counsel experienced in the area of
 10 employment discrimination law, review and revise its EEO policies to conform with the
 11 law. Defendant shall ensure that its policies include, at a minimum:

- 12 a. A strong and clear commitment to preventing unlawful disability
 13 discrimination;
- 14 b. A clear and complete definition of disability discrimination;
- 15 c. A clear and complete definition of reasonable accommodations;
- 16 d. A statement that disability discrimination, including unlawful denial
 17 of reasonable accommodations, is prohibited and will not be tolerated;
- 18 e. A clear and strong encouragement of persons who believe that they
 19 have been subjected to disability discrimination, including denial of a
 20 reasonable accommodation, to report their concerns;
- 21 f. The identification of specific individuals, with telephone numbers and
 22 email addresses, to whom employees can report concerns about
 23 disability discrimination;
- 24 g. A clear explanation of the steps an employee can take to report
 25 disability discrimination which must include options of either oral or
 26 written complaints;
- 27 h. An assurance that Defendant will investigate allegations of any
 28 activity that might be construed as unlawful disability discrimination,

1 including but not limited to unlawful denials of requests for
2 reasonable accommodations, and that such investigation will be
3 prompt, fair, and reasonable, and conducted by a neutral investigator
4 specifically trained in receiving, processing, and investigating
5 allegations of disability discrimination and in accordance with the
6 requirements of Paragraph 21;

7 i. An assurance that Defendant will take appropriate corrective action to
8 make victims whole and to eradicate the unlawful conduct within its
9 workforce;

10 j. A description of the consequences, up to and including termination,
11 that will be imposed upon violators of Defendant's policies against
12 disability discrimination; and

13 k. A promise of maximum feasible confidentiality for persons who
14 report unlawful disability discrimination, or who participate in an
15 investigation into allegations of disability discrimination.

16 21. Defendant shall promptly, reasonably, and appropriately investigate all
17 complaints of discrimination. The investigation must include, at a minimum, the following:
18 (a) documentation of the complaint; (b) a finding of whether discrimination occurred; (c)
19 a credibility assessment as appropriate; (d) interviews of all potential victims and witnesses
20 identified, including the individual(s) alleged to have participated in or condoned the
21 unlawful conduct; (e) a review of all documents which might shed light on the allegation,
22 where such exist; (f) contemporaneous notes of the investigation and conclusions; and, (g)
23 contemporaneous notes of all corrective and remedial measures where discrimination is
24 found. Defendant shall take immediate appropriate corrective action as appropriate to make
25 discrimination victims whole, to discipline violators, and to eradicate the discrimination.

26 22. Defendant shall not retain documents related to the investigation in any of
27 the complainant's personnel files. These documents instead must be retained in a separate
28 secure location. All disciplinary actions taken against employees for violation of

1 Defendant's policies will be permanently retained in the violator's personnel file. In those
 2 cases in which no conclusion could be reached on the allegations, the investigation
 3 documents shall permanently remain in the alleged violator's file.

4 23. Within thirty (30) calendar days after completion of the creation of the
 5 policies or the review of the policies required under this Decree, the written policies shall
 6 be posted in a prominent location frequented by employees at each of Defendant's facilities
 7 and electronically distributed to each current employee. The policies shall also be
 8 distributed to all new employees within ten (10) calendar days of hire. Defendant shall
 9 make the written equal employment opportunity policies available in alternative formats
 10 as necessary for persons with disabilities that may prevent them from reading the policies.

11 24. Within forty-five (45) calendar days after completion of the creation of the
 12 policies or the review of the policies required under this Decree, Defendant shall forward
 13 a copy of the policies to the EEOC and a letter verifying that the policies were posted and
 14 distributed in accordance with Paragraphs 20, 21, and 23.

15 *C. Training*

16 25. Annually for the duration of this Decree, Defendant shall provide equal
 17 employment opportunity training for all its employees at each of its facilities. Under this
 18 provision, employees will be trained at a minimum in the following areas: (a) Defendant's
 19 policies and procedures for reporting alleged discrimination; (b) understanding the kind of
 20 conduct which may constitute unlawful discrimination; (c) the penalties of engaging in
 21 discriminatory behavior; (d) Defendant's non-retaliation policy; and (e) Defendant's
 22 procedures for handling and honoring accommodation requests. All training under this
 23 Paragraph shall be at Defendant's selection and expense. Training may be by live
 24 presentation, online interactive training, and/or computer training, or any combination
 25 thereof. The training will be conducted as follows:

- 26 a. **Non-managerial Employees:** Each year for the duration of this
 27 Decree, Defendant will provide non-managerial employees at least
 28 1.5 hours of training on employment discrimination, specifically

1 disability discrimination, protections employees have against
2 discrimination, and methods for making complaints of discrimination.
3 The training should also emphasize that every employee should report
4 any behavior he or she witnesses that the employee believes to be
5 discriminatory, regardless of who is engaged in the behavior and who
6 the behavior is directed at.

7 b. **Supervisory and Managerial Employees:** Each year for the duration
8 of this Decree, Defendant will require all individuals who work in a
9 managerial or supervisory capacity for Defendant to receive at least
10 3.5 hours of training on the ADA and other federal anti-discrimination
11 laws. One and a half of these hours must directly address disability
12 discrimination. The training must also cover proper methods for
13 receiving, handling, and investigating (where applicable) complaints
14 of discrimination, including but not limited to complaints of disability
15 discrimination. The training must also cover proper methods of
16 receiving, handling, and accommodating requests for reasonable
17 accommodations. Additionally, Defendant will require employees
18 who are newly hired or recently promoted into a managerial or
19 supervisory position to complete the requisite 3.5 hours of training for
20 that year within ninety (90) days of being hired or promoted.

21 c. Notice of the training, and agenda for the training, training materials,
22 and the resumes relating to the presenters, will be provided to the
23 EEOC at least (10) days before each training session. Defendant
24 agrees that the first such training session will take place within ninety
25 (90) days after the Court's entry of this Decree. Defendant agrees that
26 all of its personnel shall both register and attend the training sessions.

27 ***D. Notice Posting***
28

1 26. Defendant shall post and cause to remain posted the posters required to be
2 displayed in the workplace by EEOC regulation 29 C.F.R. § 1601.20 in all of its facilities.

3 27. Within five (5) business days after the Court's entry of this Decree,
4 Defendant shall post in each of its facilities, in a conspicuous place frequented by
5 employees, the Notice attached as Exhibit B to this Decree. Notice shall remain posted for
6 the duration of this Decree. If the Notice becomes defaced or illegible, Defendant will
7 replace it with a clean copy. Defendant shall certify to the EEOC, in writing, within ten
8 (10) days of entry of this Decree, that the Notice has been properly posted and shall provide
9 recertification in each of the semi-annual reports required under the Reporting provisions
10 of this Decree.

11 **VIII. RECORDKEEPING AND REPORTING**

12 28. For the duration of this Decree, Defendant shall maintain all records
13 concerning implementation of this Decree, including, but not limited to, the following:

- 14 a. Applications;
- 15 b. Personnel files;
- 16 c. Payroll records;
- 17 d. Work schedules;
- 18 e. Records reflecting all oral and written complaints of discrimination,
19 including but not limited to disability discrimination, and all records
20 documenting the investigation of such complaints, including
21 applicable witness statements, documents compiled during the
22 investigation, any conclusions and findings, and any corrective
23 remedial actions taken; and
- 24 f. Records reflecting the public placement of the postings of the policies
25 expressed in Paragraphs 26-27.

26 29. Defendant shall provide reports for each twelve (12) month period following
27 the entry of this Decree. The reports shall be due August 1 of each applicable year, except
28

1 for the final report which shall be submitted to the EEOC six (6) weeks prior to the date on
2 which the Decree is to expire.

3 30. **Reporting Requirements:** Each report required under Paragraph 29 shall
4 provide the following information:

5 a. **Training:** The report shall include the following information for each
6 training program required under this Decree conducted during the
7 reporting period:

- 8 1. A registry of attendance and/or certificates of completion;
- 9 2. The identity and contact information of the consultant and/or
10 vendor who provided the training; and
- 11 3. A copy of the program agenda and any written materials
12 provided during the training and/or any PowerPoint
13 Presentations used.

14 b. **Posting of Notice:** In each report, Defendant shall recertify to the
15 EEOC that the Notice required to be posted under this Decree has
16 remained posted during the reporting period, or, if removed, was
17 promptly replaced.

18 c. **Kenneth Wiley's Personnel File:** In its initial report, Defendant shall
19 certify to the EEOC that any documents that reference the charge or
20 this action have been expunged as required by Paragraph 16 of this
21 Decree.

22 d. **Other Individual Relief:** In its initial report, Defendant shall certify
23 to the EEOC that the letter has been provided to Mr. Wiley required
24 by Paragraph 17 of this Decree.

25 e. **Policies and Procedures:** In each report, Defendant shall report on
26 the creation and/or revision of any policies or practices required by
27 this Decree, as required by Paragraphs 20-24.
28

1 36. The EEOC may review Defendant's compliance with the aforementioned
2 provisions of this Decree during the term of this Decree upon written notice to Defendant's
3 attorney of record at least ten (10) business days in advance of any inspection of
4 Defendant's documents or premises. Upon such notice, Defendant shall allow
5 representatives of the EEOC to review its compliance with this Decree by inspecting and
6 photocopying relevant, non-privileged documents and records, interviewing employees
7 and management officials on its premises, and inspecting its premises.

8 **XI. COSTS AND ATTORNEY'S FEES**

9 37. Each party shall be responsible for and shall pay its own costs and attorney's
10 fees.

11 **XII. NOTICE**

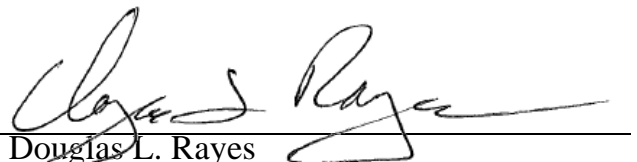
12 38. Unless otherwise indicated, any notice, report, or communication required
13 under the provisions of this Decree shall be sent by electronic mail or by certified mail,
14 postage prepaid, as follows:

15 Mary Jo O'Neill
16 Regional Attorney
17 EEOC Phoenix District Office
18 3300 N. Central Ave., Ste. 690
19 Phoenix, AZ 85012
20 mary.oneill@eeoc.gov
21 jess.acosta@eeoc.gov

22 **XIII. SIGNATURES**

23 39. The Parties to this Decree agree to the entry of this Decree subject to final
24 approval by the Court.

25 Dated this 9th day of May, 2022.

26 
27 Douglas L. Rayes
28 United States District Judge

1 SO ORDERED this _____ day of _____, 2022.

2 BY THE COURT:

3
4 Honorable Douglas L. Rayes

5 BY CONSENT:

6 Equal Employment Opportunity
7 Commission

RCC Partners, LLC

8 By: 

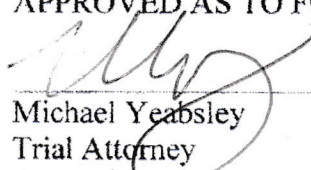
By: 

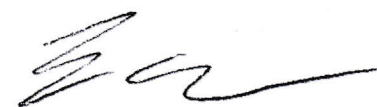
9 Mary Jo O'Neill
10 Regional Attorney

11 Date: 5/5/22

Date: 5/3/22

13 APPROVED AS TO FORM:

14 
15 Michael Yeabsley


Edmundo P. Robaina

16 Trial Attorney

Yen Pilch Robaina Kresin, PLC

17 EEOC Phoenix District Office

6017 N. 15th Street

18 3300 N. Central Ave., Ste. 690

Phoenix, AZ 85014

Phoenix, AZ 85012

Attorney for Defendant,

19 Attorney for Plaintiff EEOC

RCC Partners, LLC